

Chapter 11.02

EQUAL OPPORTUNITY ADMINISTRATION

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11.02.020 Equal Opportunity Officer; Duties.

There is hereby established in the classified service of the City an Equal Opportunity Officer who shall be appointed by the Mayor subject to approval by the City Council. Such officer shall be responsible for the administration and enforcement of all provisions of Title 11 of the Lincoln Municipal Code in the manner prescribed by ordinance in said Title 11. In addition, such officer shall be responsible for such other administrative duties relating to human rights as shall be from time to time assigned to said officer by ordinance or by executive order of the Mayor, or by the Commission on Human Rights.

Under the direction of the Commission, it shall be the duty of the Equal Opportunity Officer to maintain contacts with groups in the community which are concerned with understanding between races, cultures, and sexes; to report to the Commission regarding the activities of these groups; to serve as a source of accurate and reliable data on the problems in the above-mentioned fields; to implement the decisions of the Commission; to work in cooperation with the directors of all municipal departments and other governmental divisions in the improvement of services; to eliminate whatever source of interracial friction may exist; to work to remove inequalities which pertain to minority groups' status, disabled individuals, and women on such problems as housing, recreation, education, employment, law enforcement, vocational guidance, and related matters; to serve as secretary to the Commission (without the right to vote on matters before the Commission on Human Rights) for purposes of receiving correspondence, discrimination complaints, and other legal and nonlegal communications, and to keep and record all records and communications of the Commission; and to do and perform such investigatory activities as the Commission shall within its jurisdiction direct. (Ord. 12849 §8; February 19, 1980: prior Ord. 12151 §2; November 21, 1977: Ord. 10917 §2; October 1, 1973).

11.02.030 Commission on Human Rights; Established; Appointment of Members; Terms; Quorum; Removal.

(a) Pursuant to the provisions of Article X of the charter of the City of Lincoln, there is hereby established a Human Rights Commission which shall consist of nine members who shall be a representative cross-section of the citizens of the City appointed by the Mayor and subject to confirmation by the City Council.

(b) All appointments to the Commission shall be for a term of three years each. No person shall serve more than two full three-year terms on the Commission, excluding a prior partial term served. Members of the Commission shall receive no compensation for their services.

(c) Five members of the Commission, unless otherwise provided by its rules and regulations, shall constitute a quorum for the purpose of conducting the business thereof and a majority affirmative or negative vote of those present shall be required in order to the Commission to act on any matter before it. A vacancy in the Commission shall not impair the right of the remaining members to perform the duties of the Commission.

(d) No member or members of the Commission shall attempt to act on any matter over which the Commission has jurisdiction unless and until the full commission has given prior approval to such action. Any member of the Commission may be removed by the Mayor for inefficiency, neglect of duty, misconduct, or malfeasance in office after being given a written statement of the charges and an opportunity to be heard thereon. (Ord. 17029 §1; July 15, 1996: prior Ord. 16048 §5; February 10, 1992: Ord. 12849 §9; February 19, 1980: Ord. 12151 §3; November 21, 1977: Ord. 10917 §2; October 1, 1973).

11.02.040 Commission on Human Rights; Powers and Duties.

The provisions of this title shall be administered by the Commission on Human Rights for the City of Lincoln. The City Attorney is granted the authority to enforce this title. In carrying out the provisions of this title, the Commission shall act as an advisory body to the Mayor, City Council, and Equal Opportunity Officer on all matters within its jurisdiction and shall have the power to:

(a) Review those actions of the Equal Opportunity Officer as provided by this title, and affirm or reverse such actions as may be necessary to further the purposes of this title. If any such actions are reversed, the Commission shall then direct the Equal Opportunity Officer in appropriate courses of action to further such purposes.

(b) Institute actions to educate the public as to unlawful discriminatory practices and the enforcement measures provided in this title for the prevention and punishment of such practices.

(c) Enforce the provisions of this title by appropriate measures, including the requiring of affirmative action on the part of violators of such provisions in order to correct such violations, and by ordering such violators to cease and desist from doing any act in violation of this title.

(d) Seek to eliminate and prevent discrimination in places of public accommodation, housing, and employment as provided in this title on the basis of race, color, religion, sex, disability, national origin, familial status, ancestry, age, or marital status.

(e) Effectuate the purposes of this title by conference, conciliation, and persuasion so that persons may be guaranteed their civil rights and goodwill may be fostered.

(f) Formulate policies to effectuate the purposes of this title and to make recommendations to agencies and officers of the city government in aid of such policies and purposes, and to advocate for

the rights of women, minorities, and disabled individuals and promote causes in the name of the Commission before agencies and legislative bodies on matters of human rights.

(g) Designate one or more members of the Commission, or the Equal Opportunity Officer, or the Equal Opportunity Officer's staff and such other persons who may be retained for such purpose to conduct investigations of any complaint alleging discrimination because of race, color, religion, sex, disability, national origin, familial status, ancestry, age, or marital status, and in aid of such investigation, subpoena records or witnesses and compel their attendance, and to attempt to resolve such complaint by conference, conciliation, or persuasion and conduct such conciliation meetings and conferences as are deemed necessary to resolve a particular complaint.

(h) Determine whether reasonable cause exists to credit the allegations of a complaint; provided, that reasonable cause may be determined by any Commission committee of at least three commissioners or a Commission-appointed hearing officer, and such committee's or hearing officer's actions shall be deemed to be the action of the Commission.

(i) Determine that a complaint cannot be resolved by conference, conciliation, or persuasion.

(j) Dismiss complaints when it is determined there is not reasonable cause to credit the allegations of a complaint, or when a complainant requests the withdrawal of such complaint.

In the event that a complainant cannot be reasonably located, or circumstances are such that the complainant's complaint cannot be finally disposed of, the Commission shall have authority to administratively close such investigation of such complaint. If no further action is taken on such claim for a period of four years from the date of closure, the complaint shall then be deemed dismissed without prejudice.

(k) Hold hearings in aid thereof, subpoena witnesses and compel their attendance, and administer oaths, take testimony of any person under oath and in connection therewith require for examination any books or papers relating to any matter under investigation or in question before the Commission.

(l) Issue publications and the results of studies and research which will tend to promote goodwill and minimize or eliminate discrimination because of race, color, religion, sex, disability, national origin, familial status, ancestry, age, or marital status.

(m) Recommend damages, based on actual pecuniary loss or such damages as the Commission or Commission-appointed hearing officer may determine should be assessed against a respondent violating the provisions of this title. Additionally, the Commission may require such other remedial measures to accomplish the purposes of this title as the Commission may deem necessary. Such remedial measures may include directing the display of equal access to public accommodations or housing posters, equal employment posters, and such other informational materials as the Commission may deem appropriate.

(n) The Commission may file in a like manner a verified complaint of an alleged unfair discriminatory practice whenever there is reason to believe an unfair discriminatory practice has occurred, but this complaint must contain a bill of particulars setting out dates, names of witnesses, and the facts upon which the complaint is based.

(o) The Commission may, after the filing of a complaint, request the City Attorney to institute appropriate legal proceedings to protect the rights and privileges of the complainant provided by this title. (Ord. 17029 §2; July 15, 1996: prior Ord. 16048 §6; February 10, 1992: Ord. 15966 §3; September 9, 1991: Ord. 13793 §3; March 26, 1984: Ord. 12849 §10; February 19, 1980: Ord. 12151 §4; November 21, 1977: Ord. 10917 §2; October 1, 1973).

11.02.050 Commission on Human Rights; Rules and Regulations; Adoption.

The Commission on Human Rights may promulgate such rules and regulations consistent with the provisions of Title 11 of the Lincoln Municipal Code as shall be necessary for it to properly perform its powers and duties thereunder; provided, no proposed rule or regulation before the Commission shall be adopted until the Commission shall have held a public hearing thereon after notice to the public as required by state law and Article IV, Section 29 of the City Charter. (Ord. 10917 §2; October 1, 1973).

11.02.060 Discriminatory Practice; Complaint; Notice; Investigation; Conference and Conciliation.

Any person claiming to be aggrieved, as herein defined, by an unlawful discriminatory practice may by themselves, their agent, or their attorney, file with the Commission a verified complaint in writing which shall state the name and address of the person alleged to have committed the unlawful discriminatory practice complained of within one year of the date upon which complainant has knowledge of such discriminatory practice, and which shall set forth the particulars thereof and contain such other information in a form as may be required by the Commission.

After the filing of such complaint, the Commission shall send notice to the complainant acknowledging the filing and advising the complainant of the time limits and choice of forums available under this Title. The Commission shall also furnish the person named in the complaint, within ten days of the filing of the complaint, a copy of the complaint, which notice of complaint shall set forth the procedures, rights, and obligations of said respondents as it relates to such complaint.

The Commission shall thereafter make an investigation of such complaint, but such complaint shall not be made public by the Commission. If the Commission determines, after such investigation, that there is reasonable cause to believe that the complaint is true, the Commission's representative or agent shall endeavor to eliminate any such alleged unlawful practice by informal methods of conference, conciliation, or persuasion.

The processing of a complaint shall be as follows:

(a) Within thirty days after receiving a complaint, or within thirty days after receiving reference of a complaint pursuant to 42 U.S.C. 3610(f), the Commission shall begin to investigate the complaint and determine whether reasonable cause exists to credit the allegations of the complaint. Unless good cause is shown, such investigation shall be concluded within 100 days of the filing or receipt of such complaint and such complaint shall be resolved no later than one year after such filing or receipt. If such investigation or resolution of such complaint is not completed within the prescribed time limits, the complainant and respondent shall be notified of such delay and the reasons therefor.

(b) When the Commission has completed its investigation and made its determination concerning such complaint in any subsequent proceeding brought under this title, the burden of proof shall be upon the complainant.

(c) In conducting an investigation, the Commission or its agent shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence, and may examine, record, and copy such materials and take and record the testimony or statement of such persons as are reasonably necessary for the furtherance of the investigation; provided, that such evidence shall not be made public except as otherwise herein provided. However, the complainant or respondent or their respective counsel may review the Commission's investigatory file, but neither party nor their counsel may make public the contents of such files except as herein provided. (Ord.

17029 §3; July 15, 1996: prior Ord. 16048 §7; February 10, 1992: Ord. 12152 §5; November 21, 1977).

11.02.070 Discriminatory Practice; Failure of Informal Proceedings; Charge; Notice; Judicial Election for Housing Discrimination Charges; Public Hearing; Findings and Order of the Commission.

(a) In case of failure to eliminate any unlawful practice by informal methods of conference, conciliation, or persuasion, the Commission shall, within ten days of such failure, cause to be issued and served in the name of the Commission a charge requiring the person or persons named in the charge, hereinafter referred to as "respondent," to answer the allegations of the charge within twenty days of the receipt of such charge and appear at a public hearing at a time and place to be specified in the charge. Said charge shall set out the requirements for responding to such charge and shall advise the respondent of the effect of the failure to respond to such charge. Copies of the charge shall also be served upon the charging party and on each aggrieved person on whose behalf the charge was filed. Where a charge arises under the provisions of Chapter 11.06 (Housing), the charge shall also advise parties as to how to make an election under subparagraph (b) of this section.

(b) When a charge is issued under Chapter 11.06 (Housing), a charging party, a respondent, or an aggrieved person on whose behalf the charge was filed may elect to have the claims asserted in that charge decided in a civil action under Section 11.01.050 of this title in lieu of a hearing under subparagraph (c) of this section. The election must be made not later than twenty days after service has been made under subparagraph (a) of this section. The person making the election shall give notice of doing so to the Commission and to all other charging parties and respondents to whom the charge relates.

(c) Public hearings shall be conducted either by a hearing officer appointed by the Commission or before such members of the Commission as the Commission may determine. No commissioner shall sit on or participate in any hearing of a charge of which such commissioner may have personal knowledge or may have participated in the investigation thereof. Such hearing officer shall be an attorney licensed to practice in the State of Nebraska for a period of three years immediately prior to such appointment. Such hearing officer shall be compensated from funds appropriated by the City Council for such purpose to the Human Rights Commission.

(d) Charges issued by the Commission shall be presented at such public hearing by an attorney on the staff of the City Attorney, and the investigator who made the investigation and any commissioner who may have been involved in any investigations or proceedings prior to the commencement of such proceedings shall not participate in the hearings except as a witness, nor will such investigator or commissioner participate in the deliberation by the Commission.

(e) If, upon all the evidence adduced at the hearing, the hearing officer or the Commission members hearing the charge find that a respondent has engaged in an unlawful discriminatory practice as defined in this title, the hearing officer or such commissioners shall make findings of fact and shall reduce same to writing. Such findings of fact by the hearing officer and commissioners shall be submitted to the Commission for entry of an appropriate order. The Commission shall issue such order in the name of the Commission executed by the chair of such Commission, requiring the respondent to cease and desist from the unlawful discriminatory practice and to take such affirmative action including, but not limited to, the extension of full, equal, and unsegregated accommodations, advantages, facilities, and privileges to all

persons as in the judgment of the Commission will effectuate the purposes of this title, including a requirement for a report of the manner of compliance and, in addition, the Commission may enter such orders providing such relief as provided by this title, and providing for the placement of equal opportunity posters and materials as the Commission may deem appropriate.

(f) If, upon all the evidence, the hearing officer hearing the charge or the commissioners hearing the charge find that a respondent has not engaged in any unlawful discriminatory practice, such hearing officer or commissioners shall make findings of fact and shall reduce the same to writing. The Commission shall issue and cause to be served on the charging party an order executed by the chair of the Commission dismissing the charge as to the respondent and shall make public disclosure of each such dismissal.

(g) The commissioners or hearing officer shall file with the Commission their findings of fact within seven calendar days of the completion of the public hearing.

(h) The Commission's final order shall be made a part of the record of the proceedings. The entire record shall be filed with the Commission and shall be available for public inspection during regular office hours.

(i) The transcript of the record of the proceedings shall consist of the following: verified complaint, as the same may have been amended or supplemented; the charge; answer to the charge, as the same may have been amended; notice of hearing; transcript or recording of testimony; exhibits; depositions; written applications; orders; stipulations; final order of the Commission, and such other matters as may properly become a part of the record.

(j) Such orders of the Commission may be appealed to the District Court for Lancaster County as provided by Neb. Rev. Stat. § 15-1201, et seq. (Ord. 17029 §4; July 15, 1996: prior Ord. 16048 §8; February 10, 1992: Ord. 12849 §11; February 19, 1980: Ord. 12151 §6; November 21, 1977).

11.02.075 Hearings; Rules.

(a) In conducting such public hearing, the hearing officer or presiding commissioner shall make every effort to develop a substantive record and shall make such inquiry of the parties as to elicit pertinent evidence to assist the Commission or the hearing officer in making their decision.

(b) Hearings need not be conducted according to the technical rules of evidence. However, oral evidence shall be taken only on oath or affirmation. The production of further evidence upon any issue may be ordered. All motions and objections made during a public hearing shall be stated orally on the record and shall, with the ruling on such motions or objections by the hearing officer or presiding commissioner conducting the hearing, be included in the record of the hearing.

(c) The charging party or respondent may appear at the hearing with or without counsel, present evidence, and compel the appearance of witnesses and records in such charging party's or respondent's behalf. Upon written application to the Commission, a charging party or respondent shall be entitled to the issuance of a reasonable number of subpoenas to the same extent and subject to the same limitations as subpoenas issued for the Commission. Subpoenas issued at the request of a charging party or respondent shall show on their face the name and address of such party and shall state that they were issued at the request of the charging party or respondent. The charging party or respondent may cross-examine the witnesses. The testimony taken at the hearing shall be under oath and be transcribed by an official stenographer. Such stenographic records need not be reduced to writing unless requested by one of the parties to the public hearing or the Commission.

- (d) The hearing officer or presiding commissioner shall have full authority to:
 - (1) Make all decisions regarding the admissions and exclusions of evidence;
 - (2) Administer oaths and affirmations;
 - (3) Control the proceedings;
 - (4) Interrogate witnesses;
 - (5) Rule upon all objections and motions;
 - (6) Exclude from the hearing room or from further participation in the proceedings any person who engages in improper conduct at the hearing;
 - (7) Exclude witnesses from the hearing room at the request of either party;
 - (8) Authorize and set times for the filing of briefs.
- (e) If either the respondent or the complainant fail to appear at the public hearing after being served with due notice of the time and place thereof, the hearing officer or presiding commissioner may conduct the hearing. The hearing officer or presiding commissioner may either consider the evidence presented at the hearing and may make recommendations thereon or make a "finding of default" for the party in attendance at the hearing. (Ord. 17029 §5; July 15, 1996: prior Ord. 16048 §9; February 10, 1992).

11.02.080 Informal Proceedings to be Confidential; Violation; Penalty.

Nothing said or done during or as a part of endeavors to eliminate an alleged unlawful practice by informal methods of conference, conciliation, or persuasion as set forth in Section 11.02.040 may be made public by the Commission without the written consent of the parties or used as evidence in a subsequent proceedings. (Ord. 17029 §6; July 15, 1996: prior Ord. 16048 §10; February 10, 1992: Ord. 12849 §12; February 19, 1980: Ord. 12151 §7; November 21, 1977).

11.02.090 Annual Report.

On or before the first day of February of each year, the Commission shall make a written report to the Mayor and City Council of its activities for the preceding year and of the status of human rights and equal opportunity in the City of Lincoln. (Ord. 17029 §7; July 15, 1996: prior Ord. 12849 §13; February 19, 1980: Ord. 12151 §7A; November 21 1977).

11.02.100 Coercion, Intimidation, and Retaliation Prohibited.

It shall be deemed a violation of this title for any person to (1) retaliate against any other person on account of such person availing himself or herself of the protections granted under this title; or (2) penalize, obstruct, or intimidate any person for participating in any investigation of a violation of this title, or for filing any charge under this title, or availing himself or herself of any of the privileges provided by this title; or (3) coerce or intimidate any person who refuses to violate the provisions of this title, the laws of the State of Nebraska, or of the United States. (Ord. 16048 §11; February 10, 1992).